83-1523

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

LAWRENCE D. WILSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

LAWRENCE D. WILSON
211 Montrose Street
Philadelphia, Pa. 19147
(212) 372-2650

PRO SE

QUESTION PRESENTED

Did the Court abuse its discretion by denying the Petitioner Equal protection of law.

Did the Court abuse its discretion by denying the Petitioner due process of law in condoning the perjury of the Government witness calculated to subvert the Petitioner's Constitutional rights.

PARTIES INVOLVED

The following parties have an interest in the outcome of this case:

LAWRENCE D. WILSON, Petitioner

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In The

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VS

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

To the Honorable, the Chief Justice and Associates Justices of the Supreme Court of the United States:

The petitioner, LAWRENCE D. WILDON, respectfully prays that Writ of Certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Third Circuit entered in this proceeding on October 11, 1983.

A petition for Rehearing was denied by the U.S. Court of Appeals for the Third Circuit on December 8, 1983.

OPINION BELOW

The Opinion of the Court of Appeals is attached hereto as Appendix "A".

JURISDICTION

The judgement of Court of Appeals in the instant matter was entered on 10-11-83. A petition for Rehearing was thereafter filed by petitioner, and the same Was denied by the order of the Court of Appeals filed 12-8-83. A copy of said order is appended hereto and designated as Appendix "B" to this petition. The jurisdiction of the Honorable Court is involved pursuant to the provision of Title 28, U.S. Code Section 1254 (1).

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment V:

The Right to be treated Equally under the law and the right to Due Process of law .....

United States Constitution, Amendment VI:

The right to effective assistance of counsel .....

STATUTES

28 U.S.C. Section 1254(1) .....-.....

28 U.S.C. Section 1915(d) .....

28 U.S.C. Section 2255 .....

Federal Rules of Civil Procedure

Rule 60 (b) (1), (3) and (6) .....

Federal Rules of Criminal Procedure

Rule 11 .....

Federal Rules of Appellate Procedure

Rule 35 .....

Rule 40 .-.....

STATEMENT OF THE CASE

Petitioner was indicted on an eithty-eight count indictment on October 31, 1974. On January 6, 1975 he appeared before Judge James H. Gorbey for what was supposed to be a guilty plea. He refused to plead guilty. Counsel was allowed to withdraw his representation of the Petitioner and the Court denied Petitioner's request to appoint counsel. SEE APPENDIX D. On January 23, 1975 he

entered a plea of guilty to counts two, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen before the Honorable James H. Gorbey. At that time he was represented by Mark D. Schaffer of the Defender Association of Philadelphia, Federal Division. The Government was represented by Louis J. Rach, Assistant U.S. Attorney. On March 11, 1975, Judge Gorbey placed Petitioner on five years probation and ordered him to pay a $5,000 fine and make restitution. This case was transferred to Judge Daniel H. Huyett, 3rd on March 10, 1977. On January 8, 1980 Judge Huyett revoked Petitioner's probation following a hearing at which he found that the Petitioner had violated the terms of his probation and sentenced him to a period of two years incarceration. On March 13, 1980 Petitioner filed a motion to vacate his guilty plea pursuant to 28 U.S.C. Section 2255. On April 9, 1981 Petitioner's counsel, Lewis Small, filed a memorandum in support of that motion.

Petitioner argued that his guilty plea was not knowingly and voluntarily entered because Judge Gorbey did not conduct a proper Rule 11 colloquy and because his counsel, Mr Schaffer, gave him no choice but to plead guilty.

Petitioner also argued that he was denied effective assistance of counsel because he was required to begin trail two weeks after Mr. Schaffer was appointed, thus denying Mr. Schaffer adequate time to investigate and prepare his case.

The Court held a hearing May 5, 1981. Mr. Schaffer was called as a witness for the Government. He testified that the Petitioner understood the nature of the charge to the best of his recollection (See transcript Page 24). Additionally, Mr. Schaffer testified that he had no specific recollection of conducting an investigation into the case. (See transcript Page 27-28); that he represented the Petitioner before Judge Gorbey on numerous occasions for probation violations (See transcript Page 25); and that he met with the Petitioner on more than one occasion both in his office and in court (See transcript Page 29), prior to the Petitioner having pled guilty. The Petitioner testified that his counsel prior to the appointment of Mr. Schaffer did not tell him of his conflict of interest in representing him (See transcript Page 6). The Petitioner, also, testified that he did not have the funds necessary to hire new counsel (See transcript Page 6); that Judge Gorbey advised him that he was

not eligible for the legal services of the Defender Association but, inspite of that fact he was required to obtain counsel and report same to the Court on the day of being ordered to hire counsel and be prepared for trial in 14 days from that day (See transcript page 7); and the Petitioner testified that under pressure to obtain new counsel, and not being financially able to do so, he decided to plead guilty even though he did not feel guilty, because he "did'nt have any choice." (See transcript Page 8). Further, the Petitioner testified that he met with Mr. Schaffer one time before coming into Court to plead guilty (See transcript Page 8-9).

It was established at that hearing that the notes of testimony of the Rule 11 Colloquy have been lost and are thus unavailable as an avenue of review in this matter. On May 7, 1981 the Court denied the Petitioner's motion concluding that the Petitioner was dishonest and evasive and that Mr. Schaffer was honest and forthright. Additionally, the Court made following conclusions of law:

1) Defendant has the "burden of proof" in this despite the fact that the notes of testimony of the Rule 11 Colloquy have been lost. United States v. Hollis, 569 F. 2d 199, 204

2) Defendant has not proven that he was denied effective assistance of counsel. See finding of fact 5-12, 18. Moore v. United States, 432 F. 2d 730, 736 (3rd Cir. 1970) (en banc);

3) Defendant has not proven that he did not enter his guilty plea voluntarily and knowingly. See finding of fact 5,6, 9-17 and

4) Manifest injustice will not result if defendant is not allowed to withdraw his guilty plea. See United States v. Moore, 360 F. 2d 146, 147 (2nd Cir. 1966).

On June 10, 1981 Petitioner filed a Notice of Appeals to the Third Circuit Court of Appeals. After months of unsuccessful attempts to get meaningful cooperation from his court appointed counsel, Petitioner elected to proceed pro se before the appeals court. On instructions from Mr. Shaun V. Sauls, Staff Attorney for the Third Circuit, Petitioner submitted his motion for leave to proceed pro se. Subsequently, the Third Circuit denied Petitioner's motion and dismissed his appeal pursuant to 28 USC Section 1915 (d)

on December 1, 1981. No petition for rehearing was filed by Petitioner because Petitioner was incarcerated at the time and was not informed of the Court's action until December 23, 1981. The notice received by the Petitioner was comparble to a "FINAL MANDATE" of the Court. Thus the Petitioner was denied the right to even file for a rehearing in this matter.

On February 8, 1982 Petitioner filed a Motion for Relief from Judgement pursuant to Rule 60(b)(1), (3) and (6) of the Federal Rules of Civil Procedure. Petitioner moved the Court to vacate and set-aside the judgement made and entered in this matter of May 7, 1981, for the following reasons:

1) Mistake, inadvertence or excusable neglect on the part of the Court;
2) Fraud, misrepresentation and misconduct on the part of a material witness and the Government; and
3) Manifest injustice ensuing to the defendant.

The Petitioner filed his motion pursuant to the finding of fact and conclusions of law reached by the Court. The Petitioner sought to show the Court perjured statements by Mr. Schaffer and legal opinions which entitle him to relief from the Judgment of the Court. More, specifically, Petitioner pointed out that Mr. Schaffer gave sworn affidavit in which he unequivocally stated that he "investigated" this case from the date of his appointment on January 9, 1975 until January 23, 1975 which is contrary to his sworn testimony of May 5, 1981, that he does not recall conducting an investigation into this case. Also, Petitioner pointed out that Mr. Schaffer never represented him at a "single" violation of probation hearing before Judge Gorbey, which is contrary to his sworn testimony of May 5, 1981, that he represented the Petitioner in numerous violations of probation hearing before Judge Gorbey. Petitioner gave a sworn affidavit that Mr. Schaffer never met with him at any time in Court prior to January 23, 1975 when he pled guilty and only once outside of Court prior to January 23, which is contrary to Mr. Schaffer's sworn testimony that he met with Petitioner

several times before January 23rd. The Court's conclusions of law and finding of fact at the May 5, 1981 hearing rested on the credibility of Mr. Schaffer and its subjective view that the Petitioner is not credible.

On May 17, 1982 the Court dismissed Petitioner's motion stating that inspite of the contradictions in Mr. Schaffer's testimony pointed out by the Petitioner the Court adheres to its conclusions of May 5, 1981 that Mr. Schaffer is credible and the Petitioner is not. In its May 17 order the court concluded that were the motion brought by the Petitioner a new motion pursuant to 2255 that the Court would not have to entertain such motion.

The Petitioner appealed the lower Court's dismissal of his motion and on October 11, 1983 a Judgement Order was filed in that Court affirming the lower Court's dismissal. The Petitioner filed a petition for rehearing and suggested a rehearing en banc pursuant to Rule 35 and 40, Rules of Appellate Procedure. On December 8, 1983 the Appeals Court denied the petition for rehearing.

ARGUMENT

The lower Court and the Appellate Court has concluded that the "burden of proof" in this matter rest with the Petitioner despite the fact that the notes of testimony from the Rule 11 Colloquy have been lost. This conclusion of law is in direct conflict with prior decisions in this court and the Third Circuit. In United States ex rel. McCloud v. Rundle, 402 F. 2d 853, (3rd Cir 1968), Judge Freeman stated, "The majority then goes on to say that in the present case, where no transcript or other records exists which would reveal the circumstances surrounding the plea, the burden of proving that the plea was voluntary rest on the prosecution. The Third Circuit was presented with the same problem in a number of cases and it adopted the view that the constitution requires that in a case of a silent or inadequate record, the burden of proving that a plea of guilty was knowingly and voluntarily made rest on the state. See United States ex rel. Crosby v. Briefly, 404 F. 2d 790 (3rd Cir 1968); and United States ex rel. Fink v. Rundle, 414 F. 2d 545 (3rd Cir 1969). This Rules applies primarily to cases such as the

present which are Post-Boykin cases. The question of where the burden of proof lies, in the instant case, is also governed by McCarthy. Boykin v. Alabama 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969), requires the state court record to disclose that a plea of guilty was knowingly and voluntarily made and establishes a prophylactics per se rule invalidating a plea if the record is silent. McCarthy v. United States, 394 U.S 459. 89 S. Ct. 1166, 22L Ed. 2d 418 (1969), established a per se rule invalidating federal guilty pleas on a silent or inadequate record for violation of Rule 11 of the Federal Rules of Criminal Procedure.

The rules of law are quite clear in the m matter. However, the ruling of the two Courts suggest that the law can be applied differently to the same set of fact. If our laws are to suddenly become discriminatory or selective in application. Then we invite disrespect and promote anarchy. The Petitioner is entitled to Equal Protection of the Laws of this land. It would be travesty of justice for this Court to uphold the lower Court decision in this matter.

Even the Government in its reply brief to that filed by the Petitioner, concedes that the court Erred in placing the burden of proof on the Petitioner (See Appellees Brief). The burden of proof clearly lied with the Government but the court also Erred in its application of the law with respect to whether the Petitioner Knowingly, Intelligently and Voluntarily gave up his Constitutional Rights when he pleaded guilty. The records clearly indicates that the Petitioner was coerced into a situation which left him no choice but to plead guilty.

The Rule 11 Colloguy in this matter is not available for review. The lower court sought to reconstruct the events occuring at the time the Petitioner pleaded guilty by holding an evidentiary hearing. The lower court then relied on the testimony of the Petitioner's lawyer in concluding that the Petitioner had effective assistance of counsel. The Petitioner pointed to numerous instances of perjury on the part of his counsel at the plea, who testified at the evidentiary hearing. In fact, that same counsel was the Government's Chief witness at the evidentiary hearing. Can this court conclude that an attorney who

would perjure himself and give a false affidavit before the Court is worthy of belief that he infact effectively represented the Petitioner? The law says that the record must conclusively show that the Petitioner knowingly, intelligently and voluntarily gave up his constitutional rights in pleading guilty. McCarthy, Supra. No such conclusion can be drawn from the present record in this court. Finally, just as this Court concluded in Mooney v. Holohan 294 U.S. 103, that

> "A criminal conviction procured by the state prosecuting authorities by the use of perjured testimony known by them to be perjured and knowingly used by them in order to procure the conviction, is without Due Process of Law."

the same conclusion must drawn with respect to maintaing a conviction. Mr. Schaffer's testimony was crucial because of the absence of a transcript or stenographic notes from the guilty plea. His credibility should not be so obviously questionable in a test of the McCarthy, Supra, Rule. The Government offered no stronger proof than Mr. Schaffer's testimony and it can not be concluded that his testimony is conclusive as to the question of whether the Petitioner knowingly, and voluntarily gave up his Constitutional Rights in pleading guilty. Certainly there should be no appearance

of a Due Process violation in deciding that issue. Mooney v. Holohan, Supra. The Petitioner pled guilty after first being denied the assistance of a Court appointed lawyer. The Petitioner pled guilty after being given Court Appointed counsel to take him through the formalities of a guilty plea. That is pure and simple coercion.

CONCLUSION

It is, therefore, respectfully requested, on the basis of the arguments presented and the authorities cited hereinabove, that the within Petition for Writ of Certiorari be granted and the matter be set for hearing on the Honorable Court's docket.

Respectfully Submitted,

LAWRENCE D. WILSON,
Pro Se

APPENDIX "A"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 82-1451

UNITED STATES OF AMERICA

v.

LAWRENCE D. WILSON,

Appellant

Appeal from the United States District Court for the Eastern District of Pennsylvania D.C. Criminal No. 74-00638
District Judge: Honorable Daniel Huyett, III

Submitted Under Third Circuit Rule 12(6)
August 31, 1983

Before HUNTER, SLOVITER and BECKER, Circuit Judge

JUDGMENT ORDER

After considering the contentions raised by appellant, to-wit, that the court erred:

1. by abusing its discretion in failing to correct errors in its judgment entered May 7, 1981 pursuant to the defendant's 2255 motion;

2. by abusing its discretion in denying the defendant due process of law by overlooking the perjury of the Government witness calculated to subvert the defendant's constitutional rights;

3. by abusing its discretion in dismissing the defendant's new motion alleging fraud and misrepresentation without holding an evidentiary hearing.

It is ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

BY THE COURT,

_____

JAMES HUNTER, III CIRCUIT JUDGE

Attest:

_____

Sally Mrvos, Clerk

Dated: Oct. 11 1983

APPENDIX "B"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 82-1451

UNITED STATES OF AMERICA

v.

LAWRENCE D. WILSON,

Appellant

SUR PETITION FOR REHEARING

Present: SEITZ, Chief Judge, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, and BECKER, Circuit Judges

The petition for rehearing filed by

Appellant

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

Judge

Dated: Dec. 8 1983

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
v.	:	No. 74-638
LAWRENCE D. WILSON	:	

ORDER

NOW, May 17, 1982, upon consideration of defendant's motion for relief from judgment or order pursuant to FED. R.Civ.P. 60(b) (1), (3), and (6), filed pro se, memoranda submitted by the parties, and because:

1. On January 23, 1975, defendant entered a plea of guilty and was subsequently sentenced to five years probation and ordered to pay a fine and make restitution.

2. On January 8, 1980, following a hearing, I revoked the defendant's probation and sentenced him to two years of incarceration.

3. On March 13, 1980, defendant filed a motion to vacate his guilty plea pursuant to 28 U.S.C. S 2255.

4. On May 7, 1981, following a hearing on May 5, 1981, on defendant's S 2255 motion, I issued findings of fact, conclusions of law and an order denying defendant's motion.

5. Defendant appealed my order to the United States Court of Appeals for the Third Circuit. On December 28, 1982, the Third circuit granted defendant

leave to proceed in forma pauper's and dismissed defendant's appeal pursuant to 23 U.S.C. 1975 (d). Section 1915 (d) authorizes a court to dismiss a case if, inter alia, the court is satisfied that the action is frivolous or mailcious.

6. Defendant next filed the instant motion styled as a motion pursuant to Fed.R.Civ.P. 60(b) (1), (3), and (6). Rule 60 provides in pertinent part that a court may relieve a party from the operation of a prior judgment or order for one of the following reasons: "(1) mistake, inadvertence, surprise, or excusable neglect (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other isconduct of an adverse party .....
(6) any other reason justifying relief from the operation of the judgment

7. Defendant argues that there was "Mistake, inadvertence or excusabel neglect on the part of the Court," "Fraud, misrepresentation and misconduct on the part of a material witness and the plaintiff, and "Manifest injustice ensuing to the denfendant."

8. Defendant alleges that specific findings of fact and conclusions of law made by me on May 7, 1981 were mistaken or in error. Assuming for the purpose of defendant's motion that Rule 60(b) (1) applice to

"mistakes" of the court, nevertheless, I adhere to my earlier findings and conclusions which have been tested by appellate review. The defendant is not entitled to relitigate these issues.

9. Defendant also alleges that Mark Shaffer, Esquire perjured himself at defendant's May 5, 1981 hearing. Mr Shaffer represented the defendant at the time of his guilty plea. He testified as a witness at the May 15, 1981 hearing. To support his argument, defendant relies upon documentary evidence which was available at the time of defendant's hearing on May 5, 1981, and testimony presented at the hearing. The issue of Mr. Shaffer's credibility was clearly presented at that time. Defendant, through appointed counsel of his choosing, had the opportunity to cross-examine Mr. Shaffer and availed himself of this opportunity. Defendant's characterization of Mr. Shaffer's testimony in his present motion is incorrect. I concluded that Mr. Shaffer was a credible witness and the defendant was not. Defendant has not come forward with new information which would lead me to reconsider my credibility determinations. Defendant's motion wholly fails to allege facts sufficient to support an allegation of fraud, misrepresentation, misconduct, or perjury. Defendant merely seeks to relitigate the credibility determinations

I made, which he is not entitled to do. I adhere to my earlier findings.

10. The final section of defendant's motion relating to his claim that he is subject to manifest injustice is a recapitulation of his arguments at the May 7, 1981. The defendant is not entitled to relitigate these matters.

11. To the extent that defendant's motion pursuant to Rule 60 should be deemed a new motion pursuant to 28 U.S.C. S 2255, I note the following language in S 2255: "The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner." Rule 9(b) of the Rules Governing Section 2255 Proceedings in the United States District Court provides: "A second or successive motion may be dismissed if the judge finds that if fails to allege new or different grounds for relief and the prior determination was on the merits ....." See also Sanders v. United States, 373 U.S. 1 (1963).

12. I find that defendant's current motion presents the same grounds decided against the defendant on May 7, 1981. The May 7, 1981 decision followed a full and fair hearing. It was a decision on the merits. The ends of justice would not be served by reaching the merits of this subsequent application.

Accordingly, IT IS ORDERED that the motion is DISMISSED.

_____

Daniel H. Huyett, 3rd, Judge

APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION

vs.

LARRY WILSON : No. 74-638

BEFORE: HON. JAMES H. GORBEY

Philadelphia, Pennsylvania, January 6, 1975

APPEARANCES:

UNITED STATES OF AMERICA
By: LOUIS RUSCH, ESQ.,
Assistant U.S. Attorney
Attorney for the Government

MICHAEL LUBER, ESQ.,
Attorney for the Defendant

MICKEY DINTER
Official Court Reporter
United States District Court

(IN CHAMBERS.)

THE COURT: This is the United States of America versus Larry Wilson, Number 74-638.

Mr. LUMBER: Michael Luber, counsel for the defendant in this matter.

Up until this morning, Your Honor, after discussing this matter with the defendant on numerous occasions, at least six or seven occasions, and evaluating the Government's case and going over the indictment and talking with Mr. Rusch and discussing this with my client, it was my impression -- not only was it my impression -- but my client indicated that he would plead guilty to the indictment. It is an 88-count indictment.

I indicated to my client that on a guilty plea the Government would be willing to take a plea to eight counts of the 88-count indictment. The other counts would be withdrawn.

My client, after going over the evidence and indicating what had occurred here, expressed his intention to plead guilty at one of our earlier meeting.

I had seen my client last week and the week before and we indicated that this was the posture of the case and this was the tactic we would take.

Our fee, of course, was based on this situation that if we plead guilty and represented him through the guilty plea and, of course, sentencing, that that would be my fee.

I explained to my client at the very outset that, of course, he was entitled to a trial in this matter and the trial would probably be a lengthy one.

There is at least 70 or 80 witnesses in such a multi-count indictment; that we would be glad to represent him at trial. A trial such as two to three weeks would be substantially greater.

My client had paid me a retainer fee on the basis of a guilty plea and other work that we had done for him irrespective of the criminal case.

Upon speaking with my client this morning, he informs me that he does not wish to plead guilty; that he wishes a trial; that he can no longer afford my services to retain me for a trial; that he will obtain the services of a public defender or other counsel, probably a public defender.

I explained this to Your Honor and Mr. Wilson know this also from the outset that the ICDC Corporation, which is a principal in this prosecution,

is a corporation of which my uncle Gerald P. Rolf, 112 Glen Arbor Road, Havertown, is a substantial shareholder and is, in fact, treasurer of that corporation. I myself own some stock in the ICDC Corporation as does my immediate family. This coupled with the fact that, of course, we had assumed that his would be a guilty plea, there would not have been a conflict of interest had we reconciled this matter and my client agreed that he should, in fact, plead guilty. I did not foresee any conflict.

At 10 of 10:00 this morning I learned for the first time that my client did wish to go to trial. I explained to him the conflict of interest on my part and, further, that the fee arrangements which were made were not made on the basis of a three-week trial. For those reasons, Your Honor, I would respectfully request that Your Honor allow me in this peculiar situation to withdraw my appearance from the case and allow Mr. Wilson to obtain the services of either the public defender, if he so qualifies, or private counsel.

I want to reiterate again, Your Honor, for the record, I had spoken with Mr. Rusch on numerous occasions and on each of those occasions I indicated to Mr. Rusch that this would be a guilty plea.

This morning at 9:50 I learned for the first time that this matter -- that my client would not, in fact, plead guilty; did wish to exercise his right to a full trial on the merits in this matter.

THE COURT: This was originally listed for Monday, December 16th.

MR LUBER: Yes, sir.

At this particular time with Mr. Rusch I came into the chambers of Your Honor requesting additional time to investigate the claims laid down in the rather complex indictment and Your Honor listed it for trial. I indicated at that time that if I felt after making a thorough investigation that this would be a plea situation, I would advise Mr. Rusch beforehand and advise Your Honor, which I did do, advising your Deputy Clerk on the 30th of December that the matter would be a plea.

THE COURT: Do you have anything to say?

THE DEFENDANT: Well, yea. I have decided that it is better to go to trial because II think that --

THE COURT: You don't have to have any excuse for going to trial. You are entitled to a trial if you want a trial.

THE DEFENDANT: Well, I want the reason to be stated that I was going along with counsel primarily. I know that I could not afford, really, a private attorney.

This is the first time I have ever been in trouble. I did not do this for the purpose of going out and swindling or goading anybody out of any money. Unfortunately, I made a mistake.

THE COURT: Wait a minute. I don't want you to say anything on the record that could be used against you at the time of trial. If you want to go to trial, you'd better get yourself counsel; and if you can't afford counsel we will have you fill out the forms and we will have to appoint a public defender, because I don't want you to say anything on the record that might jeopardize any defense that you might have.

THE DEFENDANT: Okay

THE COURT: Are you content that he withdraw from your case?

THE DEFENDANT: Yes.

THE COURT: Okay.

Now we are under a compulsion to get these cases tried.

This is the second continuance, and it has been no fault of the Government.

We will list this case for Monday the 20th. We will have you fill out papers and if you are eligible for public defender, we will appoint one.

I would rather you not say anything further if you are going to go to trial.

Is there anything else you would like to say?

MR. RUSCH: I have nothing to add, Your Honor.

THE COURT: I can't engage in any conversation with you or give you any advise. I am very sorry. I will be trying you, you see. I don't want you to put yourself in a situation that might jeopardize something.

Is there anything further you want on the record?

Mr. LUMBER: No, sir, other that I apologize to the Court at this late time. However, again, I reiterate--

THE COURT: I would have to ask him those questions anyway.

How old are you?

THE DEFENDANT: 25.

THE COURT: What is your employment?

THE DEFENDANT: I'm working for an accounting firm, Taylor and Associates.

THE COURT: How much do you make a week?

THE DEFENDANT: They are paying me $300 a week.

THE COURT: What is your responsibility?

THE DEFENDANT: Well, I go out and pick up.

THE COURT: I mean as far as family.

THE DEFENDANT: I have a wife and one child.

THE COURT: Well, I don't think you are eligible for public defender.

Do you have any money in the bank, a car or a house?

THE DEFENDANT: Not really.

THE COURT: What do you mean "Not really"?

You don't want to file an affidavit that is not truthful, you see.

They want to know your employment, how much you earn, your sources of revenue, anything you own in the way of real estate, stocks, bonds, automobiles, how many dependents you have and your monthly bills.

If you are making $300 a week you would't be eligible for public defender. However, you can fill it out.

I think what you ought to do is go get yourself an attorney today. This case will not be continued again. This is the third time. You'd better have your attorney, whoever he will be, call us today.

(Short recess.)

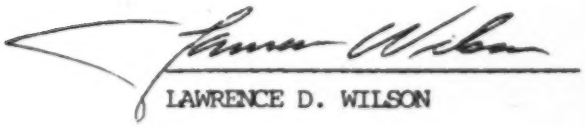
THE COURT: I find that you are not eligible for public defender and, in accordance with my directions, you will kindly get an attorney today and notify me who it is.

The case is listed for the 20th, Monday morning, at 10 o'clock.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true copy of the foregoing Petition for Writ of Certiorari on opposing counsel by depositing in the United States Post Office, postage prepaid, on February 16, 1984, a certified true, exact and full copy thereof addressed as follows:

The Solicitor General
U.S. JUSTICE DEPARTMENT
Washington, D.C.



LAWRENCE D. WILSON